UCL Capability Policy – Managing Poor Performance

1. Purpose

1.1 UCL expects that all employees, in line with UCL’s Core Behaviours, will strive to attain the highest levels of performance, engaging with the university to deliver the best learning, research, teaching and professional services possible. This policy determines the procedures to be followed when standards of performance give rise to concerns that cannot be resolved by advice and encouragement, training or increased support.

2. Scope

2.1 This policy applies to all UCL employees based within the United Kingdom except those who are within their probationary period of employment at UCL, in which case UCL’s Induction and Probation Policy and Procedure should be followed.

2.2 Employees based at overseas campuses should refer to their local country-specific policy.

2.3 Academic staff are also covered by the provisions laid out in UCL’s Statute 18 of the Charter and Statutes at the formal stage of the Procedure under this Policy.

2.4 Where an employee's poor performance is believed to be the result of deliberate negligence or misconduct, or where serious errors have been made by them to the detriment of the university, managers should use the UCL Disciplinary Policy and Procedure.

2.5 In circumstances where there are concerns about the performance and capability of an employee arising from absence due to ill health, these should be managed using the UCL Sickness Absence Policy and Procedure.

2.6 For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, qualifications, aptitude, or any other physical or mental quality.
3. Definitions

3.1 “Head of Department” (HoD) or “Director, HR Advisory Services” also includes anyone deputed to act on their behalf. References to Departments also include any equivalent structures, such as Professional Services, Institutes, etc.

3.2 “Impairment/Condition” refers to a newly diagnosed, pre-existing, emerging or changed physical, cognitive or mental health condition.

4. Principles

4.1 **Fairness**: This Policy should be applied consistently, promptly, impartially, reasonably, proportionately and without discrimination. Regular monitoring will be undertaken to ensure action initiated and any sanctions issued do not impact unfairly on any one group or in any one area.

4.2 **Confidentiality**: Information relating to an employee’s capability should only be divulged to any parties directly involved in the capability process and must remain strictly confidential to those people.

4.3 **Natural Justice**: At every formal stage of the capability procedure, the employee will be advised of the nature of the manager’s concerns in writing and will be given the opportunity to state his/her case before a decision is made. Where a warning is issued, the employee will be provided with appropriate support to improve his/her performance.

4.4 **Informal Action**: Informal action should be used wherever possible and appropriate to improve performance before formal action is considered. Where a first instance of unsatisfactory performance is sufficiently serious to warrant bypassing altogether the informal stage of the Procedure under this Policy, it may be initiated at Stage 2 – First Formal Hearing.

4.5 **Disability**: Where the manager is aware that an employee has an impairment/condition, she/he should consider the UCL guidance concerning Supporting Disabled People in the Workplace and the relevant provisions of the Equality Act 2010, including the duty where necessary to make ‘reasonable adjustments’ for Disabled People in the workplace.

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1 UCL is obliged as an employer to make ‘Reasonable Adjustments’ for any employee who is a Disabled Person, where a workplace provision, criterion or practice, or the physical features of the working environment might otherwise place that person at a substantial disadvantage in comparison to their non-disabled colleagues. This includes, where appropriate, ensuring that the needs of disabled employees for ‘Reasonable Adjustments’ are acknowledged and addressed when applying the Capability Policy. For more information about UCL’s approach to making ‘Reasonable Adjustments’ please visit the [UCL Equalities website](#).
4.6 **Representation:** An employee has the right to be accompanied by a work colleague or trade union representative throughout the formal procedure. It is important to avoid real or perceived conflicts of interest so as to ensure fairness. The employee must notify the Hearing Manager of the name of their representative before any meetings are held under the formal Procedure.

4.7 **Capability and Grievance:** Any concerns that an employee has regarding action being taken under this Policy and Procedure should be raised as part of her/his response to the action and will normally be considered within the Procedure under this Policy. A manager may, at her/his discretion, halt capability proceedings and deal with the grievance first. Any grievance raised by an employee which does not relate to this policy, will be subject to UCL's [Staff Grievance Policy](#) and will normally be heard only after completion of the Procedure under this Policy.

4.8 **Right of Appeal:** An employee has a right of appeal against any formal sanctions in accordance with the Appeals Procedure. Sanctions, including a warning or dismissal will remain in place pending the outcome of any appeal.

4.9 **Recordings:** While notes will be taken of the proceedings, it is not acceptable for audio or visual recordings to be made, unless this has been agreed in advance as a 'reasonable adjustment'.

4.10 **Academic freedom:** Management of poor performance through use of this Policy is not intended to infringe academic freedom.

5. **Process**

In order to avoid the suggestion that there has been unfair treatment or discrimination, managers are encouraged to seek advice and assistance from [Human Resources Advisory Services](#) at all stages in order to keep consistency across UCL in the operation of the procedures that form part of this Policy.

**Management of Performance**

5.1 It is a line manager’s responsibility to support and monitor the performance of employees they manage and to raise any concerns they may have with an employee as soon as possible, typically through regular supervision. The manager is also responsible for monitoring the workload of employees and for ensuring that duties and responsibilities fall within the range of reasonable expectations.

5.2 There may be circumstances where a manager reasonably believes that an employee was set a reasonable target and yet failed to meet it when given every opportunity to do so. This policy is intended to provide a constructive, standardised, and formal framework to support managers in intervening to address such problems of performance. Unless the matter of concern is significant, it is anticipated that the majority of issues will be dealt with informally.
5.3 At the end of an employee’s probationary period, clear objectives and standards of performance should be set out and agreed with the employee, in line with UCL’s Appraisal Schemes. The Capability Policy should be used to address all matters of unsatisfactory performance.

5.4 Managers should ascertain whether any alleged failure to meet required standards is due to misconduct, capability, or some other reason, when determining the appropriate approach to take. Where necessary, guidance should be sought from HR Advisory Services.

Informal Action

5.5 Informal action is not part of the formal Capability Procedure and as a result, employees are not entitled to representation at these meetings.

5.6 Where a manager has concerns about performance standards or objectives not being met, and one-to-one meetings have not resolved these concerns, a confidential meeting should be held between the manager and employee for the manager to clarify the level of performance that is expected and, if necessary, put in place appropriate support. The invitation to the employee will direct her/him to this Policy for guidance and for clarification of the implications of not meeting agreed objectives and standard of performance.

5.7 At the meeting the manager will confirm the level of performance that is expected. The manager should provide constructive feedback and the employee should be given every opportunity to express their views on the issues raised, including identifying any barriers to improving their performance, such as time and workload management, or meeting an identified training need.

5.8 The outcome of this discussion, agreed actions to provide appropriate support, and any expected performance standards and objectives will be documented, including how and when performance will be reviewed again. Please see Appendix A, Stage 1 for guidance on the Informal Procedure to follow and Appendix D for a template ‘Performance Improvement Plan’. These documents will be kept confidentially by the manager and shared with the employee concerned.

Formal Action

5.9 Following informal action, where it becomes apparent that an employee is not performing at an acceptable level even where agreed support has been put in place; and/or the perceived level of performance is such that Health and Safety is put at significant risk; and/or substantial costs or other liabilities are being incurred; the manager should initiate the formal procedure shown at Stage 2 of Appendix A. This procedure is also outlined in a flow-chart at Appendix B.

5.10 For employees covered by Statute 18, formal capability action that may result in an oral or written warning being issued shall be managed in line with the provisions of this Policy and Procedure. A hearing will normally be chaired by the Head of Department (except where natural justice dictates otherwise) and an appeal heard by a Dean or
Vice-Provost. Serious capability matters that may result in dismissal shall be dealt with under the provisions of Statute 18, Part III, paragraphs 14 – 20.

6. Appeals

6.1 An employee has the right to appeal against any formal action taken against them under this Policy. The Appeals procedure is outlined at Appendix C.

7. Monitoring and Review

7.1 UCL monitors the use of the Capability Procedure by sex, age, ethnic origin, and disability status. The resulting data will be analysed by the Human Resources Division, reported to the relevant Committees and discussed with the recognised trade unions.

7.2 UCL HR will keep the operation of this policy under review.

8. Appendices

Appendix A: UCL Capability Policy - Procedure for Managing Poor Performance
Appendix B: UCL Capability Policy - Procedure Flowchart
Appendix C: UCL Capability Policy - Appeals Procedure
Appendix D: UCL Performance Improvement Plan

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1 If an employee subject to this Policy and Procedure is also a Branch Official of a Trade Union recognised by UCL for the purposes of collective bargaining, the manager will inform the Director, HR Advisory Services. If the employee who is subject to this Policy and Procedure is a senior member of a UCL-based Branch Committee (i.e. the UCU President, Vice-President, immediate Past President or Branch Secretary; the UNISON Chair, Vice-Chair, Secretary or Assistant Secretary; the Unite Chair, Vice-Chair, Secretary and Assistant Secretary), HR Advisory Services will inform the relevant Regional Officer after gaining the employee's consent. In the case of all other trade union representatives, the Director of HR Advisory Services will inform the Secretary of the relevant UCL Branch Committee after gaining the employee's consent.